

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

FILED

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THE MAGNAVOX COMPANY,  
a Corporation, and  
SANDERS ASSOCIATES, INC.,  
a Corporation,

Plaintiffs,

v.

BALLY MANUFACTURING CORPORATION,  
a Corporation, CHICAGO DYNAMIC  
INDUSTRIES, INC., a Corporation,  
EMPIRE DISTRIBUTING, INC., a  
Corporation, MIDWAY MFG. CO., a  
Corporation, SEEBURG INDUSTRIES,  
INC., a Corporation, THE SEEBURG  
CORPORATION OF DELAWARE, a  
Corporation, WILLIAMS ELECTRONICS,  
INC., a Corporation, and WORLD  
WIDE DISTRIBUTORS, INC., a  
Corporation,

Defendants.

CLERK  
DISTRICT COURT  
CONSOLIDATED  
CIVIL ACTION NOS.

74 C 1030

74 C 2510

RESPONSES ON BEHALF OF DEFENDANTS BALLY  
MANUFACTURING CORPORATION, EMPIRE DISTRIBUTING,  
INC. AND MIDWAY MFG. CO. TO PLAINTIFFS' REQUESTS  
FOR ADMISSION NOS. 1-144 AND INTERROGATORIES NOS. 54-196

Defendants Bally Manufacturing Corporation and Empire  
Distributing, Inc., and Midway Mfg. Co. hereby respond, pursuant  
to Rules 36 and 33, respectively, to Plaintiffs' Requests For  
Admission Nos. 1-144 and Interrogatories Nos. 54-196 as herein-  
after set forth.

Requests For Admission Nos. 1(f)-1(1)

(f) Defendant's model known as "Asteroid" and iden-  
tified in defendants Midway Mfg. Co.'s and Empire Distributing,  
Inc.'s responses to plaintiffs' interrogatories is accurately  
represented in the documents produced by defendant Midway Mfg.  
Co. for plaintiffs and bearing document identification numbers  
10-14, 34, and 43.

(g) Defendant's model known as "Winner II" and identified in defendants Midway Mfg. Co.'s and Empire Distributing, Inc.'s responses to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Midway Mfg. Co. for plaintiffs and bearing document identification numbers 1-5 and 45.

(h) Defendant's model known as "Winner IV" and identified in defendants Midway Mfg. Co.'s and Empire Distributing, Inc.'s responses to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Midway Mfg. Co. for plaintiffs and bearing document identification numbers 6-9, 36, 44, and 46.

(i) Defendant's model known as "Playtime" and identified in defendants Midway Mfg. Co.'s and Empire Distributing, Inc.'s responses to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Midway Mfg. Co. for plaintiffs and bearing document identification numbers 19-23 and 42.

(j) Defendant's model known as "TV Basketball" and identified in defendants Midway Mfg. Co.'s and Empire Distributing, Inc.'s responses to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Midway Mfg. Co. for plaintiffs and bearing document identification numbers 15-18, 35, and 40.

(k) Defendant's model known as "Leader" and identified in defendants Midway Mfg. Co.'s and Empire Distributing, Inc.'s responses to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Midway Mfg. Co. for plaintiffs and bearing document identification numbers 24-33, 38, and 41.

(l) Defendant's model known as "Lo Boy Leader" and identified in defendants Midway Mfg. Co.'s and Empire Distributing, Inc.'s responses to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Midway Mfg. Co. for plaintiffs and bearing document identification numbers 24 and 29-32.

Objections To Requests For Admission Nos. 1(f)-1(1):

Defendants object to Requests For Admission Nos. 1(f) through 1(1) on the ground that they are vague and indefinite, and not susceptible of being admitted or denied. Requests For Admission No. 1(f)-1(1) purport to be addressed jointly to Bally Manufacturing Corporation, Empire Distributing, Inc., and Midway Mfg. Co., but each of these defendants is a separate entity and is an individual defendant in this suit, and any Request For Admission should be directed to an individual defendant, and not to a group of defendants.

Moreover, Requests For Admission 1(f)-1(1) are vague and indefinite and therefore not susceptible of being admitted or denied because they refer to "defendant's model", without specifying the identity of the particular defendant to which reference is made.

However, to advance these proceedings, defendant Midway states that, as presently advised, documents bearing Identification Nos. 10-14, 34 and 43; 1-5 and 45; 6-9, 36, 44 and 46; 19-23 and 42; 15-18, 35 and 40; 24-33, 38 and 41; and 24 and 29-32 represent the portions of the models to which they are respectively directed, although some parts substitutions and modifications may have been made in these models of devices as actually made or sold by Midway. Empire and Bally state that they are without actual knowledge of the specific apparatus necessary to enable them to determine whether the specified documents accurately represent such apparatus and are therefore without sufficient knowledge to admit or deny Request Nos. 1(f)-1(1). This determination can be as readily accomplished by plaintiffs as by defendants Empire and Bally.

Requests For Admission Nos. 1(m)-1(v)

(m) Defendant's model known as "Pong" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-31, 1-32, and 1-33.

(n) Defendant's model known as "Pong Doubles" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-28, 1-29, and 1-30.

(o) Defendant's model known as "Space Race" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-24, 1-25, 1-26, and 1-27.

(p) Defendant's model known as "Gotcha" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-20, 1-21, 1-22, and 1-23.

(q) Defendant's model known as "World Cup" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-16 (two drawings), 1-18, and 1-19.

(r) Defendant's model known as "Quadrapong" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiff and bearing document identification numbers 1-12, 1-13, 1-14, and 1-15.

(s) Defendant's model known as "Gran Trak 10" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-1, 1-2, 1-3, and 1-4.

(t) Defendant's model known as "Rebound" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-8, 1-9, 1-10, and 1-11.

(u) Defendant's model known as "Superpong" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-5, 1-6, and 1-7.

(v) Defendant's model known as "Paddle Battle" and identified in defendant Empire Distributing, Inc.'s response to plaintiffs' interrogatories is accurately represented in the documents produced by defendant Empire Distributing, Inc. for plaintiffs and bearing document identification numbers 1-34, 1-35, 1-36, 1-37, 1-38, and 1-39.

#### Objections To Requests For Admission Nos. 1(m)-1(v)

Defendants Bally Manufacturing Corporation and Empire Distributing, Inc. object to Requests For Admission 1(m) through 1(v) on the ground that they are vague and indefinite, and therefore not susceptible of being admitted or denied. Requests For Admission No. 1(m)-1(v) purport to be addressed jointly to Bally Manufacturing Corporation and Empire Distributing, Inc., but each of these defendants is a separate entity and is an individual defendant in this suit, and any Request For Admission should be directed to an individual defendant, and not to a group of defendants.

Moreover, Requests for Admission 1(m)-1(v) are vague and indefinite and therefore not susceptible of being admitted or denied because they refer to "defendant's model", without specifying the identity of the particular defendant to which reference is made.

However, to advance these proceedings, defendants Empire and Bally state that they are without actual knowledge of the



specific apparatus to enable them to determine whether the specified documents accurately represent such apparatus and are therefore without sufficient knowledge to admit or deny Request Nos. 1(m)-1(v). This determination can be as readily accomplished by plaintiffs as by defendants Empire and Bally.

Request For Admission No. 2:

Defendant's following model identified in its response to plaintiffs' interrogatories includes a "standard television receiver" as that phrase is used in claim 25 of U.S. patent 3,659,284:

Objections To Request For Admission No. 2

Defendants Bally Manufacturing Corporation, Empire Distributing, Inc. and Midway Mfg. Co. object to Request For Admission No. 2 on the ground that it is incomplete and meaningless on its face and therefore is not susceptible of being admitted or denied. Moreover, Request For Admission No. 2 could serve no useful purpose at trial because it is incomplete and meaningless on its face, and fails to comply with Rule 36 which requires that "Each matter of which an admission is requested shall be separately set forth."

Defendants further object to Request For Admission No. 2 on the ground that in order to respond to it defendants would have to interpret a series of instructions which are complicated, subject to differing interpretations and which are contradictory to the Request itself. The instructions read as follows:

"Each of the requests for admission numbers 2-144 includes paragraphs (a)-(zz), each paragraph relating separately to different ones of the apparatus identified by the defendants. Those apparatus are identified in the following list:

- |                              |                                   |
|------------------------------|-----------------------------------|
| (a) "Asteroid"               | (b) "Winner II"                   |
| (c) "Winner IV"              | (d) "Playtime"                    |
| (e) "TV Basketball"          | (f) "Leader"                      |
| (g) "Lo Boy Leader"          | (h) "TV Ping Pong"                |
| (i) "TV Tennis"              | (j) "Olympic TV Hockey"           |
| (k) "Olympic TV Football"    | (l) "TV Goalee" or "Super Goalee" |
| (m) "Pong"                   | (n) "Pong Doubles"                |
| (o) "Space Race"             | (p) "Gotcha"                      |
| (q) "World Cup"              | (r) "Quadrapong"                  |
| (s) "Gran Trak 10"           | (t) "Rebound"                     |
| (u) "Superpong"              | (v) "Computer Space NA-2010"      |
| (w) "Space Ball"             | (x) Amutronics' unknown model     |
| (y) "Paddle Ball"            | (z) "Pro Tennis"                  |
| (aa) "Pro-Hockey"            | (bb) "Olympic Tennis"             |
| (cc) "Soccer"                | (dd) "Wipe Out"                   |
| (ee) "Clean Sweep"           | (ff) "Volley"                     |
| (gg) "Hockey" or "TV Hockey" | (hh) "Paddle Battle"              |
| (ii) "Tennis Tourney"        | (jj) "Super-Soccer"               |
| (kk) "Spike"                 | (ll) "Elimination"                |
| (mm) "Formula K"             | (nn) "Twin Racer"                 |
| (oo) "Astro-Hockey"          | (pp) "Sportarama"                 |
| (qq) "Club Tennis"           | (rr) "Computer TV Hockey"         |
| (ss) "Spike It"              | (tt) "Rally"                      |
| (uu) "TV Pong"               | (vv) "TV Hockey"                  |
| (ww) "Table Tennis"          | (xx) "Wham Bam"                   |
| (yy) "Pace Car Pro"          | (zz) "Gran Trak 20"               |

Each request for admission 2-144 should be responded to just as if the above list were inserted after the colon appearing in the request.

Each defendant except Bally Manufacturing Corporation is requested to respond to each of requests for admission 2-144 separately as to each of those apparatus which it either identified in response to plaintiffs' interrogatories or has made, used, or sold. Each defendant except Bally Manufacturing Corporation need not respond to those paragraphs of requests for admission 2-144 which relate to apparatus not identified in its response to plaintiffs' interrogatories and not made, used, or sold by it. Defendant Bally manufacturing Corporation is requested to respond to each of requests for admission 2-144 separately as to each of those apparatus which it, defendant Midway Mfg. Co., or defendant Empire Distributing, Inc. either identified in response to plaintiffs' interrogatories or has made, used, or sold. Defendant Bally Manufacturing Corporation need not respond to those paragraphs of requests for admission 2-144 which relate to apparatus not identified in the responses of it, defendant Midway Mfg. Co., or defendant Empire Distributing, Inc. and not made, used, or sold by it, defendant Midway Mfg. Co., or defendant Empire Distributing, Inc."

Clearly, the purported instructions quoted above are ambiguous and subject to various interpretations. Moreover, the instructions contradict Request For Admission No. 2 because the instructions state that the Request applies to apparatus "either identified in response to Plaintiffs' Interrogatories" or "made, used or sold by defendant, whereas Request For Admission No. 2 refers only to apparatus "identified in its response to plaintiffs' interrogatories".

Defendants Bally Manufacturing Corporation, Empire Distributing, Inc. and Midway Mfg. Co. further object to Request For Admission No. 2 on the ground that it is vague and indefinite and therefore is not susceptible of being admitted or denied because it refers to "defendant's following model", without specifying the identity of the particular defendant to which reference is made.

Defendants further object to Request For Admission No. 2 on the ground that it is vague and indefinite and therefore not susceptible of being admitted or denied because it calls for an interpretation of a phrase "as that phrase is used" in a claim of one of the patents in suit. Plaintiffs have not advised defendants as to the meaning of that phrase "as that phrase is used" in the patent claims, even though plaintiffs are the patentees and are therefore in the best position to know the meaning of the language used in the claims. By referring to a phrase "as that phrase is used" in claims, plaintiff obviously contemplates that the phrase has some particular meaning other



than the ordinary meaning of the words. Defendants should not be put to the useless task of speculating as to what meaning plaintiffs attach to particular language of the claims.

#### INTERROGATORY 54

If defendant's response to any portion of request no. 2 herein is other than an unqualified affirmative response:

(a) State in detail each and every reason defendant relies upon for failure to give each such unqualified affirmative response;

(b) Identify separately by column and line number of U.S. Patent 3,659,284 and document, page, and line number in the file history of U.S. patent application Serial No. 828,154 all of the material contained therein relied upon by defendant in support of the reasons stated by defendant in response to paragraph (a) of this interrogatory;

(c) Identify separately each and every document not referred to in defendant's response to paragraph (b) of this interrogatory, and the material contained therein by page and line number, relied upon by defendant in support of the reasons stated by defendant in response to paragraph (a) of this interrogatory;

(d) If any reason stated by defendant in response to paragraph (a) of this interrogatory relates to an uncertainty of defendant concerning the definition of any term used in the request for admission, state in detail (i) the reason for defendant's uncertainty as to the definition of each such term, (ii) defendant's contention as to the definition of each such term, and (iii) supply the information requested in paragraphs (b) and (c) of this interrogatory with respect to each such contention.

#### Objections To Interrogatory No. 54

In view of defendants' objections to Request No. 2, no answer is required. However, further, defendants Bally Manufacturing Corporation, Empire Distributing, Inc. and Midway Mfg. Co. object to Interrogatory 54 on the ground that it is based on Request For Admission No. 2 which, as previously pointed out, is

incomplete and meaningless on its face and therefore not susceptible of being admitted or denied.

Defendants further object to Interrogatory 54 on the ground that in order to respond to it defendants would have to interpret a series of instructions which are complicated to the point of being incomprehensible, and thus subject to many different interpretations. The instructions read as follows:

"Each of requests for admission 2-144 is to be considered as being followed by an interrogatory requesting certain information concerning the respective defendant's response thereto if the response to any part of that request for admission is other than an unqualified affirmative one. The interrogatories bear the numbers 54-196 and correspond to requests for admission 2-144, respectively. Thus, interrogatory 54 follows request for admission 2, refers to request for admission 2, and seeks information concerning the respective defendant's response to request for admission 2, interrogatory 55 follows request for admission 3, refers to request for admission 3, and seeks information concerning the respective defendant's response to request for admission 3, and so on up to interrogatory 196 which follows request for admission 144 and seeks information concerning the defendant's response to request for admission 144.

The interrogatories following requests for admission 2-56 are identical to one another except for the requests for admission to which they refer. In order to avoid unnecessarily burdening the record in this action, the interrogatory corresponding to requests for admission 2-56 is included herein only once and appears as interrogatory 54 immediately following request for admission 2. Each of requests for admission 3-56 is to be considered as being followed immediately by an interrogatory 54 except referring to its corresponding request for admission.

Similarly, the interrogatories following requests for admission 57-137 are identical to one another except for the requests for admission to which they refer. The interrogatory corresponding to requests for admission 57-137 is included herein only once and appears as interrogatory 109 immediately following request for admission 57. Each of requests for admission 58-137 is to be considered as being followed immediately by an interrogatory numbered 110-189, respectively, and identical to interrogatory 109 except referring to its corresponding request

for admission. The interrogatories following requests for admission 138-144 are identical to one another except for the requests for admission to which they refer. The interrogatory corresponding to requests for admission 138-144 is included herein only once and appears at interrogatory 190 immediately following request for admission 138. Each of requests for admission 139-144 is to be considered as being followed immediately by an interrogatory numbered 191-196, respectively, and identical to interrogatory 190 except referring to its corresponding request for admission."

Each defendant is to respond to each one of interrogatories 54-196. Interrogatory numbers 48-53 as to defendant World Wide Distributors, Inc. and 50-53 as to defendants Chicago Dynamic Industries, Inc., Seeburg Industries, Inc., The Seeburg Corporation of Delaware, and Williams Electronics, Inc. have been intentionally omitted."

Clearly, the purported instructions quoted above are ambiguous, exceedingly complicated, and subject to various interpretations, making it impossible to respond truthfully to the interrogatory.

Additionally, defendants object to Interrogatory 54 on the same grounds as stated in the ANSWERS AND OBJECTIONS ON BEHALF OF DEFENDANT MIDWAY MFG. CO. TO PLAINTIFFS' FIRST INTERROGATORIES (NOS. 1 THROUGH 53) in respect to Nos. 41-53.

Defendants further object to Interrogatory 54 on the same grounds set forth in their objections to Request For Admission No. 2, on which Interrogatory 54 is based.

#### Request For Admission No. 3

Defendant's following model identified in its response to plaintiffs' interrogatories includes a television receiver:

#### Objections To Request For Admission No. 3

Defendants Bally Manufacturing Corporation, Empire Distributing, Inc. and Midway Mfg. Co. object to Request For Admission No. 3 on the ground that it is incomplete and meaningless on its face and therefore is not susceptible of being

admitted or denied. Moreover, Request For Admission No. 3 could serve no useful purpose at trial because it is incomplete and meaningless on its face. Further, Request No. 3 fails to comply with Rule 36 which requires that "Each matter of which an admission is requested shall be separately set forth."

Defendants further object to Request For Admission No. 3 on the ground that in order to respond to it defendants would have to interpret a series of instructions which are complicated, subject to differing interpretations and which are contradictory to the request itself. The instructions are quoted above in connection with defendants' objections to Request For Admission No. 2, from which it is clear that the purported instructions are ambiguous and subject to various interpretations. Moreover, the instructions contradict Request For Admission No. 3 because the instructions state that the Request applies to apparatus "either identified in response to plaintiffs' interrogatories" or "made, used or sold" by defendants, whereas Request For Admission No. 3 refers only to apparatus "identified in its response to plaintiffs' interrogatories".

Defendants further object to Request For Admission No. 3 on the ground that it is vague and indefinite and therefore is not susceptible of being admitted or denied because it refers to "defendant's following model", without specifying the identity of the particular defendant to which reference is made.

Request For Admission Nos. 5, 7-18,  
20-32, 34-40, 42-58, 60-72, and 74-137

Requests For Admission Nos. 5, 7-18, 20-32, 34-40, 42-58, 60-72, and 74-137 are similar to Request For Admission No. 2, so that it is not believed necessary to reproduce here each and every one of said requests. Defendants Bally, Empire and Midway object to Requests For Admission Nos. 5, 7-18, 20-32, 34-30, 42-58, 60-72, and 74-137 on the same grounds set forth in connection with their objections to Request For Admission No. 2, and hereby incorporate by reference all of said objections.

Interrogatories 55 Through 196

Interrogatories 55 through 196 are similar to Interrogatory 54, so that it is not believed necessary to reproduce here each and every one of the interrogatories. In view of defendants' objections to the Requests For Admission upon which these interrogatories depend, no answer is required. However, further, defendants Bally Manufacturing Corporation, Empire Distributing, Inc. and Midway Mfg. Co. object to Interrogatories 55 through 196 on the same grounds set forth in connection with their objections to Interrogatory 54, and hereby incorporate by reference all of said objections.


Requests For Admission Nos. 4,  
6, 19, 33, 41, 59, 73 and 138-144

Requests For Admission Nos. 4, 6, 19, 33, 41, 59, 73 and 138-144 are similar to Request For Admission No. 3, so that it is not believed necessary to reproduce here each and every one of




said requests. Defendants Bally Manufacturing Corporation, Empire Distributing, Inc. and Midway Mfg. Co. object to Requests For Admission Nos. 4, 6, 19, 33, 41, 59, 73 and 138-144 on the same grounds set forth in connection with their objections to Request For Admissions No. 3, and hereby incorporate by reference all of said objections.

April 29, 1975  
Chicago, Illinois


  
A. Sidney Katz

Fitch, Even, Tabin & Luedeka  
135 South LaSalle Street  
Chicago, Illinois 60603  
(312) 372-7842

Subscribed and sworn to before me this 29th day of April, 1975, in Chicago, Illinois.

  
Notary Public - My Commission  
Expires: Sept 19, 1975

The foregoing objections are made on behalf of defendants Bally, Empire and Midway by:

  
Donald L. Welsh  
A. Sidney Katz  
Fitch, Even, Tabin & Luedeka  
135 South LaSalle Street  
Chicago, Illinois 60603  
(312) 372-7842

CERTIFICATE OF SERVICE

This is to certify that copies of the foregoing  
RESPONSES ON BEHALF OF DEFENDANTS BALLY MANUFACTURING CORPORATION,  
EMPIRE DISTRIBUTING, INC. AND MIDWAY MFG. CO. TO PLAINTIFFS'  
REQUESTS FOR ADMISSION NOS. 1-144 AND INTERROGATORIES NO. 54-196  
were served on:

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Attorney for Seeburg, Williams  
Electronics & World Wide  
Distributors

by first class mail, postage prepaid, this 30th day of April,  
1975.

  
\_\_\_\_\_  
Attorney for Defendants Bally,  
Empire & Midway